

**OFFICIAL REPORT OF THE LINN COUNTY ATTORNEY**  
**REGARDING THE INVESTIGATION INTO THE DEATH OF**  
**DESIRAE ANN DANIEL**  
**FOR IMMEDIATE PUBLIC RELEASE**

On February 7, 2013, the Iowa Division of Criminal Investigation referred their investigative file to this office requesting a legal review concerning the circumstances of the December 4, 2012, shooting death of Desirae Ann Daniel (DOB 7/28/1985). The investigative report details the facts and circumstances involving the use of deadly force by Cedar Rapids Police Officers Mitchell Magill and Adrienne Phelps that resulted in the death of Desirae Ann Daniel in the 200 block of 27<sup>th</sup> Street NW in Cedar Rapids, Linn County, Iowa.

The Iowa DCI conducted a broad and detailed investigation into the incident and their investigative file was extensive, compiling approximately sixty (60) different reports, statements and summaries from several law enforcement agencies, including the Cedar Rapids Police Department, the Iowa Division of Criminal Investigation, the Iowa State Medical Examiner's Office and the DCI Criminalistics Laboratory. The investigative file also includes reports, written summations and video-taped statements of law enforcement officers, civilians and family members with information or knowledge concerning the police encounter with Desirae Ann Daniel during the early morning hours of December 4, 2012. The case file also includes photographs, medical records from St. Luke's Hospital, an autopsy report from the State Medical Examiner's Office and several reports from the DCI Criminalistics Laboratory.

Desirae Ann Daniel first came to the attention of Cedar Rapids Police Officers Mitchell Magill and Adrienne Phelps at approximately 2:29 a.m. on December 4, 2012, near the intersection of 13<sup>th</sup> Street and F Avenue NW in Cedar Rapids, Iowa. Officers Magill and Phelps were on routine patrol when they observed a white 1999 Oldsmobile 88 sedan, bearing Iowa license plate number 198ZFZ, traveling south bound on 13<sup>th</sup> Street NW. Officers recognized the vehicle from a recent incident in which they found the registered owner of the vehicle, Michelle Kuba, inside the vehicle in a state of unconsciousness.

In addition to the above-described incident, officers' attention was drawn to the vehicle when the driver, later determined to be Desirae Ann Daniel, failed to properly signal for a west bound turn onto F Avenue NW. Officer Magill also noted that the license plate light was hanging loose from its normal fixed position on the back of the vehicle.

Officers were patrolling in a fully marked official police patrol car equipped with emergency lights and siren and both officers were in their official uniforms. This particular squad car was not equipped with video-recording equipment.

Officers began to follow the white Oldsmobile sedan west bound on F Avenue NW and Officer Magill, the driver of the squad car, activated his overhead emergency lights to initiate a traffic stop. The driver of the suspect vehicle failed to respond to the officers' emergency lights and continued to travel west bound on F Avenue NW even after Officer Phelps activated their emergency siren. The pursuit continued as the suspect vehicle turned south bound towards Johnson Avenue NW and traveled through two different stop signs without stopping.

The white Oldsmobile sedan then turned west bound on Johnson Avenue NW and reached speeds between 50 to 60 miles per hour while officers continued pursuing with lights and siren activated. The suspect vehicle nearly came to a stop in the parking lot of an apartment building near 32<sup>nd</sup> Street NW but, after a brief hesitation, turned east bound on Johnson Avenue NW until turning south on 27<sup>th</sup> Street NW. The vehicle finally came to a complete stop in the 200 block of 27<sup>th</sup> Street NW.

The approximate distance between the location where officers first encountered Ms. Daniel and the location of the eventual stop was approximately two miles. Officers stopped their patrol car about two car lengths behind the vehicle driven by Desirae Daniel and illuminated the vehicle with their spot light. Officers could see the driver appeared to be the lone occupant of the vehicle and was making "furtive movements" in the front seat. According to officers, she appeared to be reaching or grabbing for something in her immediate area.

Based upon their education, training and experience, both officers drew their service revolvers before approaching the suspect vehicle out of concern for their own safety because of the driver's earlier efforts to elude and the suspicious furtive movements made by the driver after being stopped. Although officers were not aware at the time of the vehicle stop, there were active warrants of arrest for Desirae Ann Daniel for alleged probation violations in two felony cases. The arrest warrants were issued because Ms. Daniel had failed to maintain contact with her probation officer and her whereabouts were unknown.

The area in the vicinity of the vehicle stop was well lit and officers had illuminated the suspect vehicle with their spotlight. Officers Magill and Phelps advanced on the suspect vehicle in a deliberate and methodical manner shouting repeated commands to the driver to "show us your hands." Officers continued to shout this command as they advanced upon the vehicle from both sides but the driver ignored their directives and continued to make furtive movements in the front seat of the vehicle.

DCI agents interviewed several civilians who lived in the immediate vicinity of the vehicle stop and they reported hearing officers shout repeated commands to the driver. One witness reported he heard officers shout several times, "You need to comply" and another thought he heard officers yelling at the driver to "Get out of the car" and "Drop the gun."

When officers had advanced far enough to obtain a clear view of the driver, they noted that Ms. Daniel was leaning back in the driver's seat but was turned to her left in the direction of Officer Magill, who was approaching on the driver's side of the vehicle.

Both officers reported they were able to see that Ms. Daniel was holding a black handgun in her right hand with the barrel of the weapon pointed at Officer Magill. When Officer Magill saw the weapon, he yelled "gun" and both officers opened fire at the driver in response to what they perceived to be a direct and imminent deadly threat. When he first observed the weapon in Ms. Daniel's right hand, Officer Magill thought she was going to shoot him and felt he and his partner were in immediate danger of being fired upon.

Between the two of them, officers fired a total of nine rounds at Ms. Daniel, six of which struck her causing her to slump to her side. An autopsy later conducted by the State Medical Examiner's Office revealed four bullet wounds to the upper torso, one above the left knee and another to her right hand.

After firing their weapons, officers found the driver's side door to be locked and they used an ASP police baton to break out the driver's side window. Officers then recovered a Ruger model LCP .380 handgun from the lap of the decedent. A later inspection of the firearm revealed a fully loaded six (6) round clip with a live round in the chamber. Officers also conducted an ATF trace of the weapon and discovered it had been stolen approximately two months earlier from a vehicle in the Cedar Rapids area. Officers also recovered a tan holster for the weapon in the front pocket of a hooded sweatshirt being worn by Ms. Daniel, who was rushed to St. Luke's Hospital where she died shortly thereafter of her injuries.

Officers obtained a search warrant for the vehicle and discovered devices and ingredients commonly used to manufacture methamphetamine in the vehicle, including a gallon of Coleman fuel, a bottle of drain cleaner, two large HCI generators with tubing, seven empty packages of lithium batteries, and a wad of coffee filters which the DCI Laboratory later determined to contain methamphetamine. Toxicology tests that were conducted as part of the autopsy showed the presence of methamphetamine and amphetamine in the decedent's system. As part of the investigation, both officers Magill and Phelps voluntarily provided urine specimens that proved negative for the presence of drugs or alcohol.

Section 704.1 of the Iowa Code authorizes any person to use "deadly force" if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

Having thoroughly reviewed the investigative file in detail, I find that Cedar Rapids Police Officers Mitchell Magill and Adrienne Phelps were legally justified in their belief that deadly force was necessary to avoid injury or risk to their life or safety and that such force was necessary to resist a like force or threat. Officers were legally justified in drawing their sidearms when approaching the driver of the vehicle based upon her earlier attempts to elude officers and her suspicious furtive movements in the front seat of the vehicle. In addition, officers were clearly presented with an immediate threat of lethal force when they observed that Desirae Daniel was in possession of a firearm which was pointed at Officer Magill and they were justified in responding to that threat with lethal force. Based upon the facts and circumstances as described in the

DCI investigative file concerning this matter, no criminal charges are warranted because, as the circumstances clearly demonstrate, deadly force was reasonably necessary when officers were confronted with the clear and immediate threat of lethal force when Desirae Daniel pointed a loaded firearm at Officer Mitchell Magill.

Respectfully submitted,



JERRY VANDER SANDEN

Linn County Attorney

JVS/pb

Copy to:

Cedar Rapids Police Department

DCI, Attention Special Agent Richard Rahn

Joi Bergman, Linn County Communications Director

(For immediate release and dissemination to all media outlets)